

Date: March 24, 1995

Case No.: 93-SDW-3

In the Matter of

NORMAN D. MERRITT
Complainant

v.

MISHAWAKA MUNICIPAL UTILITIES, THE CITY OF MISHAWAKA
Respondent

Before: RUDOLF L. JANSEN
Administrative Law Judge

RECOMMENDED ORDER OF DISMISSAL

This case arises under the Employee Protection Provisions of the Safe Drinking Water Act, 42 U.S.C. § 300(j)-9(i) 1988. The case has been scheduled for hearing on four different occasions since July of 1993. It is presently scheduled to be heard on June 13, 1995 in South Bend, Indiana.

The respondent has now submitted a Motion to Approve Settlement. The Motion advises that the complainant reached an agreement with the respondent and others wherein he agreed to release and discharge the respondent from any and all claims relating to his employment with respondent, with the sole exception of a potential worker's compensation claim. A copy of the Agreement was attached to the Motion. The Agreement was executed on January 29, 1993. The Agreement states in part:

NORMAN D. MERRITT, for and in consideration of the sum of Ten Thousand and no/100 Dollars (\$10,000.00), receipt of which is hereby acknowledged, does hereby release and discharge the CITY OF MISHAWAKA and its officers, employees, agents and representatives of any kind whatsoever; MISHAWAKA MUNICIPAL UTILITIES and its officers, employees, agents and representatives of any kind whatsoever; and ROBERT C. BEUTTER and PHILIP R. MILLER, and each of them, of and from any and all claims, be the same known or unknown, of whatever kind or nature, which the Releasor may now have or hereafter acquire by reason of any events occurring prior to the date of this of (sic) agreement, with the sole exception being a potential Worker's Compensation claim as

to which the Releasor has given notice to the City of Mishawaka and Mishawaka Municipal Utilities.

Counsel for the respondent contends that it was the intention of all parties who were signatory to the Agreement, that it would settle and compromise all claims of the complainant with the exception of the worker's compensation matter that was mentioned within the body of the Agreement. The Agreement is signed by Norman D. Merritt, the Mayor of the City of Mishawaka and also Mr. Merritt's manager at Mishawaka Municipal Utilities, Philip R. Miller. The Agreement also was witnessed by an individual named John C. Hamilton, who was an attorney at law representing Mr. Merritt at the time.

In response to the request for approval of the settlement Agreement, the complainant by counsel contends that Mr. Merritt did not participate and consent to the settlement. It is contended that there is nothing in the record to suggest that the Safe Drinking Water Act case was intended to be settled by the Agreement nor is there any evidence that any part of the negotiation was directed to the Safe Drinking Water Act matter. Counsel for complainant requests that the Agreement be disallowed and that this matter proceed to hearing. Since the time of the submission of that responsive statement, complainant's counsel requested and was granted permission to withdraw as counsel for the complainant.

Principles have been established for evaluating whether settlements had been reached in whistleblower cases. Macktal v. Brown & Root, Inc., Case No. 86-ERA-23, Sec. Dec. Nov. 14, 1989, rev'd on other grounds, Macktal v. Secretary of Labor, 923 F.2d 1150 (5th Cir. 1991). The Secretary determined in that case that a "settlement is a contract, and its construction and enforcement are governed by principles of contract law. . . . There must be a meeting of the minds on all essential terms . . . ' and the employee's consent (must have been) voluntary and knowing.'" Macktal v. Secretary of Labor, slip op. at 4-5 (quoting Alexander v. Gardner-Denver Co., 415 U.S. 36, 52, 52 n.15 (1974) The Secretary also held in Macktal that a party cannot withdraw from a settlement after agreeing to it or oppose the approval of the Agreement at any time up to the time the Secretary approves the Agreement. A settlement is an executory contract which is binding on the parties until the Secretary acts on it. All of these findings in Macktal were affirmed by the Court of Appeals. Macktal v. Secretary of Labor, 923 F.2d at 1156-58.

In interpreting a settlement Agreement, the Secretary must apply principles of contract law. Polizzi v. Gibbs & Hill, Inc., No. 87-ERA-38, slip op. of SOL at 2-3 (July 18, 1989). Where the language of an instrument is unambiguous, the intent of the parties may be determined from its four corners; and parol extrinsic evidence is inadmissible to expand, vary, or explain

the instrument unless there has been a showing of fraud, mistake, ambiguity, illegality, duress, or undue influence. Orme v. Estate of Nellie Kruwell, et al, 453 N.E.2d 355 (Ind. Ct. App. 1983) Under Indiana law, interpreting a settlement agreement presents a question of contract law in which the primary object is to give effect to the party's intention. Lumpkin v. Envirodyne Industries, Inc., 933 F.2d 449 (7th Cir. 1991) Similarly, under Indiana law, a mere private reservation of a claim has no effect upon operation of a release, as it is the mutual intent of the parties that must control. Lazarrus v. Employers Mut. Cas. Co., 173 Ind. App. 452, 364 N.E.2d 140 (1977).

A review of the Agreement executed by Mr. Merritt in this case indicates initially that substantial consideration of \$10,000.00 was exchanged at the time of the execution of the Agreement. The Agreement is unambiguous in that it released and discharged the respondent from any and all claims, whether known or unknown and of whatever kind in nature with the "sole exception" of a potential worker's compensation matter. The complaint filed by Mr. Merritt in this matter was lodged on January 4, 1993. The Agreement was executed on January 29, 1993. This case would clearly represent a known claim which was being pursued by the complainant at the time of the execution of the Agreement.

There was also attached to the respondent's motion for acceptance of the settlement Agreement a copy of a letter directed by the complainant to the Mayor of the City of Mishawaka on May 24, 1993 which was approximately four months after the Agreement was signed. In that letter, Mr. Merritt makes the following statement:

My Workman's Comp. claim is my last action against MMU and the City of Mishawaka.

The statement indicates that Mr. Merritt fully understood that by signing the Agreement in January of that same year, that all actions were compromised excepting his worker's compensation matter. For these reasons, I reject the complainant's present contentions that he was not a participant and did not consent to the settlement Agreement which had disposed of all claims. This case was pending at the time of the execution of the Agreement, the settlement Agreement is unambiguous and was sufficiently broad to include the complainant's action here, and viewing that Agreement based upon the content of its four corners, it is my conclusion that it is binding and represents an administrative disposition of this matter.

I note initially that the Agreement encompasses the settlement of other matters which are unrelated to the Safe Drinking Water Act. For my purposes here, I limit my review of this

Agreement to determine whether its terms are a fair, adequate and reasonable settlement of Norman D. Merritt's complaint concerning violations of the Safe Drinking Water Act. Poulos v. Ambassador Fuel Oil Co., Case No. 86-CAA-1 Sec. Order, slip op. at 2 (Nov. 2, 1987).

The Agreement also contains a provision whereby Mr. Merritt waived any rights granted to him under state or federal law or regulation which may limit the effect of the Agreement. I interpret that statement as meaning that it was the intent of the parties not to limit the authority of the Secretary of Labor under any federal statute or regulation. Milewski v. Kansas Gas and Electric Co., 85-ERA-0021, Sec. Order approving settlement agreement and dismissing complaint, June 28, 1990, slip op. at 2.

I note also that the Agreement contains a disclaimer in that it was the Agreement of the parties that it does not apply to rights or claims that may arise after the date of the execution of the Agreement. I interpret that provision as meaning only that it limits the right of Mr. Merritt to sue in the future on any claims or causes of action arising out of employment actions occurring prior to the date of the execution of the Agreement. Polizzi v. Gibbs & Hill, Inc., supra.

As limited and construed herein, and following consideration of the Agreement, I find that the Agreement is fair, adequate and reasonable, and I believe it is in the public interest to adopt the Agreement as a basis for the administrative disposition of this case. Therefore, I recommend dismissal of this proceeding with full prejudice based upon authority conferred by 29 C.F.R. §24.6(a).

Rudolf L. Jansen
Administrative Law Judge

NOTICE: This Recommended Order and the administrative file in this matter will be forwarded for review by the Secretary of Labor to the Office of Administrative Appeals, U.S. Department of Labor, Room S-4309, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210. The Office of Administrative Appeals has the responsibility to advise and assist the Secretary in the preparation and issuance of final decisions in employee protection cases adjudicated under the regulations at 29 C.F.R. Parts 24 and 1978. See 55 Fed. Reg. 13250 (1990).